

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BANK LEUMI USA,

Plaintiff,

– against –

DAVID EHRLICH, ANGELA TYKOCKI,
ENRIQUE EHRLICH, and
SARA GOLDSTEIN,

Defendants.

Case No. 12-CV-4423 (AJN)

**DECLARATION OF JAMES ANCONE
IN SUPPORT OF BANK LEUMI USA'S OPPOSITION
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

JAMES ANCONE, pursuant to 28 U.S.C. § 1746, declares:

1. I am an attorney admitted to the bar of the Southern District of New York. I am associated with the law firm of Mayer Brown LLP, counsel to Plaintiff Bank Leumi USA ("BLUSA").
2. I have personal knowledge of the facts set forth in this Declaration, and, if called upon to testify as a witness, I could and would testify to such facts under oath. I submit this Declaration in support of BLUSA's motion for summary judgment.
3. Attached hereto as Exhibit A is a true and complete copy of Defendants' Account Application for account ending in 0180.
4. Attached hereto as Exhibit B is a true and complete copy of Defendants' Account Application for account ending in 0829.
5. Attached hereto as Exhibit C is a true and complete copy of Defendants' Account Application for account ending in 0837.

6. Attached hereto as Exhibit D is a true and complete copy of the International Account Terms.

7. Attached hereto as Exhibit E is a true and complete copy of the International Financial Services Arrangements.

8. Attached hereto as Exhibit F is a true and complete copy of Defendant Enrique Ehrlich's Purchase Order for the Bonds.

9. Attached hereto as Exhibit G is a true and complete copy of Defendant David Ehrlich's Purchase Order for the Bonds.

10. Attached hereto as Exhibit H are true and complete copies of certain BLUSA Account Statements for Defendants' account ending in 0810.

11. Attached hereto as Exhibit I are a true and complete copies of certain BLUSA Account Statements for Defendants' account ending in 0829.

12. Attached hereto as Exhibit J is a true and complete copy of certain BLUSA Account Statements for Defendants' account ending in 0837.

13. Attached hereto as Exhibit K is spreadsheet that I created upon a review of Exhibits H, I, and J listing certain of Defendants' securities transactions.

14. Attached hereto as Exhibit L is a true and complete copy of certain Bank Hapoalim, B.M. ("Bank Hapoalim") account opening documents completed and signed by Defendants. These documents were obtained through a Rule 45 subpoena served on Bank Hapoalim with proper notice provided to Defendants.

15. Attached hereto as Exhibit M is a true and complete copy of a Bank Hapoalim account statement from 2014 detailing certain of Defendants' securities transactions and positions.

16. On June 5, 2012, BLUSA filed the complaint [Dkt. 1]. The complaint details Defendants' investment history with BLUSA in ¶¶ 35-39.

17. On July 23, 2012, Defendants moved to dismiss BLUSA's complaint [Dkt. 8], arguing that: (i) this Court lacks jurisdiction over Defendants under contract or pursuant to New York's long-arm statute; (ii) venue in New York is improper; and (iii) New York is an inconvenient forum.

18. On February 19, 2013, this Court denied Defendants' motion to dismiss. A true and complete copy of this Court's order is attached hereto as Exhibit N. The motion to dismiss having been denied, Defendants were also required to answer the complaint under the Federal Rules of Civil Procedure, but they did not.

19. Attached hereto as Exhibit O is a true and complete copy of BLUSA's letter to the Court, dated February 22, 2013.

20. Attached hereto as Exhibit P is a true and complete copy of this Court's order, dated March 6, 2013, granting defense counsel's motion to withdraw.

21. In a declaration filed on the docket on April 10, 2013, Defendants informed the Court that they could not afford to obtain replacement legal counsel in New York and would no longer appear in this case through counsel or *pro se*. A true and complete copy of the declaration is attached hereto as Exhibit Q.

22. On June 18, 2013, BLUSA obtained entries of default for each of the Defendants [Dkt. 34-37] and, on June 19, 2014, moved for a default judgment against them [Dkt. 38].

23. Days before the deadline to oppose BLUSA's default judgment motion, on July 22, 2014, Defendants suddenly re-appeared in the case with new counsel and filed what amounted to an untimely motion for reconsideration of the Order in an effort to stave off entry of

a default judgment [Dkt. 39, 42]. Defendants argued that the International Account Terms did not govern their relationship with BLUSA because those terms were purportedly superseded by a different set of incorporated terms called the International Financial Services Arrangements (“Arrangements”) [Dkt. 44].

24. Attached hereto as Exhibit R is a true copy of this Court’s order, dated February 18, 2014. On March 4, 2014, now 21 months since the complaint was filed, Defendants finally filed an answer and asserted various counterclaims [Dkt. 60]. The parties then agreed to a scheduling order and engaged in discovery [Dkt. 61]. Specifically, the parties took six depositions, including the depositions of Defendants Enrique Ehrlich and David Ehrlich. The parties also engaged in document discovery and between them produced thousands of pages of documents. BLUSA also served interrogatories and requests for admissions on Defendants and Defendants responded and objected to same.

25. Attached hereto as Exhibit S is a true and complete copy of Defendants’ Answers to BLUSA’s First Set of Requests for Admission, dated July 21, 2014.

26. Attached hereto as Exhibit T is a true and complete copy of the Declaration of Donald L. Bittker, filed in this action on August 15, 2012.

27. Attached hereto as Exhibit U is a true copy of certain excerpts of the deposition transcript of Donald L. Bittker (with errata sheet) taken on June 18, 2014.

28. Attached hereto as Exhibit V is a true copy of certain excerpts of the deposition transcript of Uriel Ganz taken on May 29, 2014.

29. Attached hereto as Exhibit W is a true copy of certain excerpts of the deposition transcript of William Serrano (with errata sheet) taken on June 19, 2014.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the
15th day of September 2014.



James Ancone